

**Notice of Allowability**

Application No.

10/826,799

Examiner

David L. Lewis

Applicant(s)

DEPUE ET AL.

Art Unit

2629

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/29/2007.
2. ☒ The allowed claim(s) is/are 1, 5 and 8-27.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_



### REASONS FOR ALLOWANCE

1. Claims 1, 5, and 8-27 are allowed over the prior art of record.
2. Claims 2-4, 6, and 7 have been canceled.
3. The following is an examiner's statement of reasons for allowance: The Applicant's arguments filed on 8/29/2007 are persuasive. Theytaz et al. is filed on 4/15/2004, the same date of the Applicant's filing priority date and therefore, Theytaz is not prior art. Accordingly the rejection over Oliver et al. in view of Theytaz et al. is withdrawn. **The feature of independent claim 1** directed towards allowable subject matter is wherein reflected light produces a second speckle pattern at said first detector with said optical device and said surface separated by a second distance; and wherein said first light is adjusted from a first wavelength at said first distance to a second wavelength at said second distance so that a quantifiable attribute associated with said first speckle pattern and a quantifiable attribute associated with said second speckle pattern are approximately equal, wherein the ratio of said first and second wavelengths is used to measure distance between said optical device and said surface. **The feature of independent claim 12** directed towards allowable subject matter is detecting at said optical device a second speckle pattern produced by light comprising light at a second wavelength reflecting from said surface with said optical device at a second distance from said surface, wherein said first and second wavelengths are selected so that a first quantifiable value associated with said first speckle pattern and a second quantifiable value associated with said second speckle pattern are approximately equal, and measuring distance between said optical device and said surface using the ratio of said first and second wavelengths. **The feature of independent claim 18** directed towards allowable subject matter is detecting at said optical device a second speckle

pattern produced by light comprising light at a second wavelength reflecting from said surface, and measuring distance between said optical device and said surface using a first quantifiable value associated with said first speckle pattern and a second quantifiable value associated with said second speckle pattern. **Oliver et al. generally teaches of an optical device having a light source and** detector for making measurements relative to the surface however Oliver fails to teach of a second wavelength. **Therefore** the above said features in combination with the other limitations of the above independent claims 1, 12, and 18, are found to be allowable over the prior art of record, and therefore claims 1, 5, and 8-27 are allowable.

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **David L. Lewis** whose telephone number is **(571) 272-7673**. The examiner can normally be reached on MTWTHF from 8 to 5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bipin Shalwala, can be reached on **(571) 272-7681**. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571)-273-8300.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair->

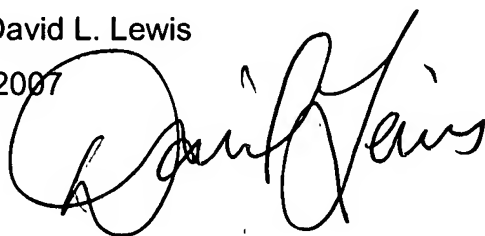
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direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Examiner: David L. Lewis

August 31, 2007

A handwritten signature in black ink, appearing to read "David Lewis", is written over the printed name and date.